

November 19, 2010

Clerk, U.S. Bankruptcy Court

Below is an Opinion of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

11 In Re:)	Bankruptcy Case
12 KARLA STEINHAUSER,)	No. 09-35218-rlld13
13 Debtor.)	
14)	
15 KARLA STEINHAUSER,)	Adv. Proc. No. 09-03284-rld
16 Plaintiff)	
17 v.)	MEMORANDUM OPINION
18 PROMOCIONES TROPICAL, INC., et al.)	
19 Defendants.)	
20)	

On September 28, 2010, I received evidence and heard testimony and argument at the trial ("Trial") on the debtor Karla Steinhauser's ("Ms. Steinhauser") complaint ("Complaint"), as amended, in an adversary proceeding ("Adversary Proceeding") to quiet title to certain real property located at 2010 Hwy. 101 N., Rockaway Beach, Oregon (the "Property"). At the conclusion of the Trial, I took the matter under advisement.

In deciding this matter, I have considered carefully the testimony presented and exhibits admitted at the Trial, as well as arguments presented, both in legal memoranda and orally. I further have taken judicial notice of the docket and documents filed in this adversary proceeding and in Ms. Steinhauser's main chapter 13 case, No. 09-35218-rld13, and certain judgments on the docket of the United States District Court for the District of Oregon for purposes of confirming and ascertaining facts not reasonably in dispute. Federal Rule of Evidence 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006). In addition, I have reviewed applicable legal authorities.

11 In light of that consideration and review, this Memorandum
12 Opinion sets forth the Court's findings of fact and conclusions of law
13 under Federal Rule of Civil Procedure 52(a), applicable in this Adversary
14 Proceeding under Federal Rule of Bankruptcy Procedure 7052.

Factual Background

16 Deciding this Adversary Proceeding presents a substantial
17 challenge because many of the relevant events occurred many years ago,
18 the subject transactions are unorthodox, and a number of the major
19 players either are dead or are imprisoned and/or unavailable to testify.
20 The original defendants named in the Complaint were: 1) Promociones
21 Tropical Inc. ("PTI"), an Oregon corporation that was administratively
22 dissolved on May 20, 1988; 2) Baldomero Andrade ("Mr. Andrade"), who died
23 in 1999; and Ruth Araiza (Ms. Araiza), the former wife of Mr. Andrade and
24 the Personal Representative of his probate estate. Additional defendants
25 named later were: Rosalba Andrade ("Ms. Andrade"), Mr. Andrade's wife at
26 the time of his death; Baldomero Andrade Lopez (child of Mr. Andrade and

1 Ms. Andrade); and Jesus Araiza (fka Baldomero Andrade, Jr.), Luis Antonio
2 Araiza, Ruth Mariela Araiza, Pablo Roberto Araiza, Ana Gabriela Araiza,
3 and Cecilia Irene Araiza (collectively, children of Mr. Andrade and
4 Ms. Araiza). The defendants are collectively referred to as the
5 "Defendants."

6 A. Ms. Steinhauser and the Property

7 Ms. Steinhauser's father bought the Property for her in 1964.
8 She resides and conducts business selling smoked crab/seafood products on
9 the Property. She was credible as a witness at Trial, but appeared
10 unsophisticated in business matters. At the time Ms. Steinhauser
11 acquired the Property, it had a "broken-down shack" on it. She has made
12 a number of improvements to the Property over the years and operated her
13 business with hired help from 1964 to 1984, "making enough to pay the
14 bills."

15 In 1981, Ms. Steinhauser met Amelia Lanier ("Ms. Lanier"), the
16 daughter of the minister at Ms. Steinhauser's church. Ms. Steinhauser
17 remembers Ms. Lanier as a very sharp dresser and a good speaker, who she
18 grew to admire and trust.

19 During the 1980's, Ms. Steinhauser's business was getting
20 bigger than she felt she could handle on her own, and Ms. Lanier
21 suggested that they form a partnership (the "Partnership") together to
22 expand the business. Ms. Steinhauser and Ms. Lanier entered into a
23 General Partnership Agreement on or about December 9, 1986. See Exhibit
24 A. Ms. Steinhauser contributed the Property, and Ms. Lanier contributed
25 \$10,000 to capitalize the Partnership. Ms. Lanier was the Manager of the
26 Partnership, overseeing its operations, including Partnership finances.

1 Ms. Steinhauser's duties were primarily operational-cooking and filleting
2 fish.

3 In addition to its seafood business on the Property, the
4 Partnership expanded to a location at S.E. 21st and Division in Portland.
5 In 1990, Ms. Lanier obtained a Small Business Administration loan ("SBA
6 Loan") to finance Partnership operations and fund the acquisition of
7 equipment for the Portland location. Ms. Steinhauser does not know how
8 the SBA Loan proceeds were spent.¹ However, apparently, the SBA Loan did
9 not provide enough funds for the operations of the Partnership under
10 Ms. Lanier's stewardship for long.

11 On or about August 31, 1993, on, as Ms. Steinhauser testified,
12 "12-hours' notice," Ms. Steinhauser was called to come down to a title
13 company office to sign loan documents. When she arrived, Ms. Lanier,
14 Ms. Lanier's mother and Clifford J. Brigham ("C.J. Brigham") were present
15 in the room. At some point, Mr. Andrade arrived. Ms. Steinhauser had no
16 substantial experience in reading legal documents, and she was given no
17 real opportunity to take the time to review the documents for the "loan
18 transaction" (the "Loan Transaction") she was asked to sign.

19 What she signed were: 1) a Bargain and Sale Deed, dated
20

21 ¹ Ms. Steinhauser testified that a portion of the SBA Loan (\$60,000)
22 was repaid from the proceeds of a foreclosure sale of property owned by
23 Ms. Lanier's mother. The balance of the SBA Loan was assumed by Ms.
24 Steinhauser. Proceeds from the sale of a home by Ms. Steinhauser paid
25 down the SBA Loan by an additional \$30,000. The balance of the SBA Loan
26 is secured by a first lien interest on the Property. In Ms. Steinhauser's schedules, the SBA Loan is described as an economic development loan owed to the State of Oregon, with an outstanding balance on the petition date of \$74,190. See Case No. 09-35218-rld13, Docket No. 8, filed 7/14/09, Schedule D.

1 August 31, 1993, purporting to transfer the Property and certain real
2 property owned by Ms. Lanier's parents to "Promociones Tropical" for
3 stated consideration of \$246,097.54; and 2) a Contract-Real Estate (the
4 "Real Estate Contract"), dated August 30, 1993, purporting to transfer
5 the same real properties, with "Promociones Tropical" identified as
6 "seller," and Ms. Steinhauer, Ms. Lanier, and Ms. Lanier's parents
7 collectively identified as "buyer," for stated consideration of
8 \$256,597.54. Some indication of the intent of the "Loan Transaction" is
9 included in the "Additional Provisions Continued" on page 3 of the Real
10 Estate Contract: The "buyer" could pay off the Real Estate Contract by
11 assuming any underlying liens on the subject properties and by paying
12 "seller" \$62,500 "equity," plus unpaid interest accrued at 10% per annum.
13 The "Additional Provisions Continued" go on to state that, "The entire
14 principal balance plus all accrued interest shall be paid in full not
15 later than four months from the date hereof by Buyer assuming the
16 underlying liens and paying off Seller's equity." As "monthly payments,"
17 the "buyer" was required to pay any obligations accruing on said
18 "underlying liens" plus payments of \$520.83 per month to the "seller."
19 See Exhibit H. Interestingly, a UCC-1 financing statement was filed on
20 November 1, 1993, identifying PTI as the Secured Party and Ms.
21 Steinhauer, Ms. Lanier and the Partnership as the Debtors in the Loan
22 Transaction. See Exhibit X.

23 The title company's Loan Transaction worksheet shows only
24 \$52,000 coming from PTI, and after costs, "loan fees" and attorney fees,
25 "net proceeds of loan" in the amount of \$37,500.81 were deposited to West
26 One Bank, and real property taxes of \$3,628.09 were paid to Tillamook

1 County. See Exhibit Z, at pp. 18-20. Ms. Steinhauser admitted in her
2 testimony that the \$3,628.09 paid outstanding real property tax
3 obligations on the Property, but she did not receive any of the other
4 "loan proceeds" and does not know how they were spent. She further
5 testified that she never intended to transfer title to the Property and
6 believed that she continued to own it. In addition, Ms. Steinhauser
7 testified that she did not make any payments on the Loan Transaction, but
8 her understanding was that Ms. Lanier had made as many as four payments
9 on the Loan Transaction. See Exhibit N, at p. 1.

10 After the Loan Transaction, relations between Ms. Steinhauser
11 and Ms. Lanier apparently deteriorated very rapidly. At some point later
12 in 1993-1994, Ms. Steinhauser discovered that Ms. Lanier was not paying
13 Partnership business bills. Shortly thereafter, the Partnership was
14 dissolved, with Ms. Lanier taking most of the business equipment, but
15 Ms. Lanier relinquished any ownership interest she had in the Property.
16 See Exhibit K. Ms. Lanier passed away from breast cancer early in 1997.

17 From 1996-1997, Ms. Steinhauser paid the real property taxes
18 for the Property and is shown as the "payor" on the real property tax
19 accounts for the Property. No one ever attempted to collect the unpaid
20 "loan" from her, and no foreclosure proceedings were initiated against
21 the Property. Following her chapter 13 bankruptcy filing, approximately
22 16 years after Ms. Steinhauser signed the Loan Transaction documents, she
23 filed the Adversary Proceeding to quiet title in her name to the
24 Property.

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26 ///

1 B. Mr. Andrade and the Loan Transaction

2 While Mr. Andrade did not pursue collection efforts against
3 either Ms. Steinhauser or the Property during the remainder of his life,
4 he did file a complaint (the "Andrade Complaint") in Washington County
5 Circuit Court in his name "dba Promociones Tropical, Inc." against James
6 R. Schaller, the attorney who was paid for work in relation to the Loan
7 Transaction, for alleged fraud and negligence in rendering

8 legal advice and preparation of documents necessary to
9 complete a loan transaction, brokered by Pepe Chavez
10 and "Funds UnLtd." wherein [Mr. Andrade] agreed to
11 loan \$52,000 to Karla Steinhauser and Amelia E.
12 Lanier, David A. Lanier and Rosella B. Lanier (the
13 "Borrowers") and [Mr. Andrade] was to receive the
14 appropriate loan documents and security in the real
15 property owned by the Borrowers and repayment of
16 \$62,500 which was to occur on or before January 1,
17 1994[.]

18 Exhibit I, at p. 2. In his Answer to the Andrade Complaint, Mr. Schaller
19 admitted that "the loan documents set forth a loan from plaintiff
20 Baldomero Andrade to persons named Karla Steinhauser, Amelia Lanier,
21 David Lanier, and Rosella Lanier in the amount of \$62,500." Exhibit J,
22 at p. 2. In his Trial Memorandum for trial on the Andrade Complaint,
23 Mr. Schaller characterized the Loan Transaction as follows:

24 Andrade was intending to make a private loan to
25 individuals for approximately \$50,000.00 with return
26 on the loan of approximately \$12,000.00 in 90 days.
The loan was to be secured by property on the Oregon
Coast.

27 Exhibit O, at pp. 1-2. Apparently, Ms. Steinhauser was called as a
28 witness at the trial of the Andrade Complaint, and she testified that she
29 would try to pay Mr. Andrade. Following trial, the Andrade Complaint was
30 dismissed with prejudice, a result that was affirmed on appeal. See

Exhibits P and R.

C. Mr. Andrade's Death and Probate Proceedings

Following Mr. Andrade's death, his estate was probated, with Ms. Araiza serving as Personal Representative. The estate inventory, dated August 31, 2000, does not include any interest in the Property or any claim against Ms. Steinhauser. See Exhibit V, at pp. 1-3. The probate estate was closed after complete administration in 2001-2002.

Ms. Araiza and Ms. Andrade both testified at the Trial. Both testified credibly that Mr. Andrade did not discuss his business affairs with them during his life, and he never mentioned the Property to either of them.

D. The Loan Transaction evaluated in light of Circumstantial Evidence

In Ms. Araiza's trial memorandum, she suggests that Ms. Steinhauser contacted mortgage brokers Pepe Chavez and C.J. Brigham to arrange for the Loan Transaction with Mr. Andrade. There is no evidence in the record tending to establish that Ms. Steinhauser initiated contacts with either Pepe Chavez or C.J. Brigham to arrange for a loan. Ms. Steinhauser testified that her only contact with C.J. Brigham² was his presence at the signing of the Loan Transaction documents. She testified as to no contacts with Pepe Chavez, other than knowing that he had some involvement with the Loan Transaction. Pepe Chavez did not testify at the Trial.

² C.J. Brigham is serving a substantial term in federal prison after being convicted on multiple counts for wire fraud, mail fraud, money laundering and Social Security fraud. See Judgment in a Criminal Case and Amended Judgment in a Criminal Case, United States District Court for the District of Oregon, Case No. 06-272(1), Docket Nos. 151 and 155.

1 However, Ms. Araiza further suggests that,

2 Brigham and Chavez arranged and closed a transaction,
3 "bridge loan" with [Mr. Andrade] as lender and [Ms.
4 Steinhauser] as borrower. Chavez encouraged [Mr.
 Andrade] to make the loan because Chavez would also
 benefit.

5 Ruth Araiza Trial Memorandum, at p. 2.

6 While it is difficult to determine exactly how the Loan
7 Transaction evolved, with so many parties unavailable so many years after
8 the fact, it appears likely that if anyone sought out Mr. Chavez and
9 C.J. Brigham to obtain a loan for the Partnership, it was Ms. Lanier, who
10 oversaw the finances for the Partnership. The Real Estate Contract, in
11 its substance, contemplates a "bridge loan," as suggested by Ms. Araiza.
12 After being contacted by Ms. Lanier, Mr. Chavez and/or C.J. Brigham
13 sought out Mr. Andrade to obtain the \$52,000 they needed to fund the
14 transaction. Mr. Andrade may have borrowed the \$52,000, but the record
15 is not clear on this point. (The title company's Loan Transaction
16 worksheet reflects a payment of \$8,570.00 to The Bank of Newport for
17 "Loan Fees." See Exhibit 2, at pp. 18 and 20.) What is clear is that
18 Mr. Andrade expected to recover a profit of at least \$10,500, plus 10%
19 interest, over the four-month term of the "bridge loan." In other words,
20 if the Loan Transaction had worked as it was structured, Mr. Andrade
21 would have made a profit in excess of 58% on his money, calculated as
22 annual interest, before possibly sharing his gains with Mr. Chavez and/or
23 C.J. Brigham, and Ms. Steinhauser and Ms. Lanier's parents would have
24 been left holding the bag with highly leveraged properties.

25 It did not work out that way because Mr. Chavez and/or
26 C.J. Brigham were not able to deliver the permanent financing required to

fund the buy-out of "Promociones Tropical" under the Real Estate Contract at the end of the four-month term contemplated in the "Additional Provisions Continued." When the buy-out did not occur as contemplated, Mr. Andrade unsuccessfully tried to recoup his lost funds by suing the lawyer, Mr. Schaller, but he did not attempt to collect from Ms. Steinhauer, either because the Property and the property put up by Ms. Lanier's parents either were too encumbered to allow for a recovery by Mr. Andrade, or Mr. Andrade did not believe he could enforce the Bargain and Sale Deed and Real Estate Contract against Ms. Steinhauer.

Jurisdiction

I have jurisdiction to decide the claims raised in the Adversary Proceeding under 28 U.S.C. §§ 1334 and 157(b)(2)(A), (B) and (O).

Discussion

15 Quiet title actions are equitable in nature, allowing for the
16 resolution of conflicting claims to real property. ORS § 105.605;
17 Spears v. Dizick, 234 P.3d 1037, 1039 (Or. App. 2010) ("In general, a
18 person may bring an equitable quiet title action to obtain resolution of
19 a dispute relating to adverse or conflicting claims to real property.).

In this case, since the Loan Transaction closed in 1993, title to the Property has been held in the name of "Promociones Tropical." See Exhibits H and Z. It is not clear from the record before me whether title was intended to be taken by PTI, the dissolved corporation, or by Mr. Andrade, using "Promociones Tropical" as a dba. Compare Exhibit I, at pp. 1-2 with Exhibit Z, at p. 25. In the Andrade Complaint, Mr. Andrade asserted that he intended the Loan Transaction to be nothing more

1 than a loan, secured by real property, including the Property. Mr.
2 Andrade further asserted that Mr. Schaller falsely induced him to enter
3 into the Loan Transaction by preparing

4 a bargain and sale deed from the Borrowers to [Mr.
5 Andrade] and had [Mr. Andrade] then enter into a real
estate contract with the Borrowers for the sale of the
6 property from [Mr. Andrade] to the Borrowers, rather
than a note and security document. . . .

7 Andrade Complaint, Exhibit I, at p. 3.

8 Ms. Steinhauser testified that she never intended to transfer
9 title to the Property when she signed documents for the Loan Transaction.
10 Ms. Steinhauser continuously has maintained and occupied the Property
11 since the Loan Transaction closed, and she has paid the real property
12 taxes for the Property continuously since at least 1996 up to the
13 present.

14 Based on this record, I find that whatever was intended with
15 respect to a loan to the Partnership, neither Ms. Steinhauser nor
16 Mr. Andrade ever intended that ownership of the Property was to be
17 transferred from Ms. Steinhauser to Mr. Andrade.

18 Defendants argue that Ms. Steinhauser is not entitled to
19 prevail on her equitable quiet title action because she has "unclean
20 hands," in that she admittedly never made a payment on the Loan
21 Transaction obligation, even though at the trial of the Andrade
22 Complaint, she testified that she would try to pay Mr. Andrade. I find,
23 based on the record presented at the Trial, that Ms. Steinhauser was
24 pushed into signing the Loan Transaction documents by Ms. Lanier, without
25 understanding what the Loan Transaction documents meant on their face,
26 because Ms. Steinhauser was given no meaningful opportunity to read or

1 consider the Loan Transaction documents. Later, when confronted with
2 what she had signed, Ms. Steinhauer was cornered and testified at the
3 trial of the Andrade Complaint that she would try to pay Mr. Andrade.
4 Subsequently, Mr. Andrade never made any effort to collect his "loan"
5 from Ms. Steinhauer or the Property. The issue as to title to the
6 Property lay dormant for many years thereafter until Ms. Steinhauer
7 raised the issue in this Adversary Proceeding.

Conclusion

In these circumstances, the affirmative defenses of unclean hands and estoppel do not avail the Defendants, and I ultimately conclude that it is appropriate to quiet title to the Property in the name of Ms. Steinhauer. Accordingly, I will deny Ms. Andrade's Motion to Dismiss the first claim for relief stated in Ms. Steinhauer's Complaint, as amended, and dismiss Ms. Andrade's counter-claim stated in her amended Answer. ORS § 12.140, Oregon's ten-year statute of ultimate repose, supports this conclusion, as no claim was asserted in behalf of any of the Defendants to claim or maintain any ownership interest in the Property between the closing of the Loan Transaction in 1993 and 2009, when the Adversary Proceeding was filed. See Woodriff v. Ashcraft, 503 P.2d 472, 474-75 (Or. 1972). However, to the extent Ms. Steinhauer has asserted adverse possession as a basis to quiet title to the Property in her name, I do not find her argument persuasive, since her occupation of the Property never was hostile or contested, either before or after the Loan Transaction closed. Accordingly, I will grant Ms. Andrade's Motion to Dismiss the second claim for relief stated in Ms. Steinhauer's Complaint, as amended. In addition, the evidentiary record does not

1 support Ms. Steinhauser's claim in her second amended Complaint that she
2 was defrauded by Mr. Andrade.

3 While consistent with the foregoing findings and conclusions, I
4 do not find in favor of the Defendants on the counter-claim to eject
5 Ms. Steinhauser from the Property and confirm ownership and possession in
6 the estate of Mr. Andrade, I am persuaded that it is appropriate as a
7 matter of equity to make an award in Defendants' favor to prevent unjust
8 enrichment: Ms. Steinhauser admitted that real property taxes accrued
9 against the Property in the amount of \$3,628.09 were paid from the
10 proceeds of the Loan Transaction. She benefitted personally to that
11 extent from the Loan Transaction and avoided further accrual at the state
12 statutory interest rate of 16% on unpaid real property taxes. See ORS
13 § 311.505(2). Accordingly, I will award an equitable lien against the
14 Property in favor of the surviving Defendants, to be allocated among them
15 as they determine to be appropriate, in the amount of \$3,628.09, plus
16 interest accrued at the Real Estate Contract rate of 10%, from the
17 closing date of the Loan Transaction until paid, except as otherwise
18 agreed among the parties. I will deny Ms. Araiza's Motion to Remand
19 (Adversary Proceeding Docket No. 85).

Finally, I find that the interests of all Defendants have been adequately represented in the lengthy proceeding to date, leading up to the Trial in the Adversary Proceeding, and I will deny Ms. Andrade's Motion to Appoint Guardian Ad Litem (Adversary Proceeding Docket No. 89).

24 Counsel for Ms. Steinhauer shall prepare and submit a judgment
25 consistent with the conclusions set forth in this Memorandum Opinion.

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1 cc: Richard J. Parker
2 Promociones Tropical, Inc.
3 Andrade Baldomero
Ruth Araiza
Roger A. Hennagin

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